

EXHIBIT D

DUPLICATE ORIGINAL

SECOND SUPPLEMENTAL INDENTURE OF LEASE AGREEMENT

Between

CLEVELAND BOTANICAL GARDEN

And

THE CITY OF CLEVELAND

CUYAHOGA COUNTY RECORDER

LILLIAN J. GREENE - 8

LE 7/16/2009 3:21:35 PM

200907161035

* * * *

THIS SECOND SUPPLEMENTAL INDENTURE OF LEASE AGREEMENT ("Second Supplemental Lease"), by and between the CITY OF CLEVELAND ("City") and CLEVELAND BOTANICAL GARDEN, an Ohio not for profit corporation (formerly known as the Garden Center of Greater Cleveland) ("Garden"), is made as of the 18th day of December, 2008 ("Effective Date") between the City through its Director of Parks, Recreation and Property and the Garden, to include all leased premises authorized to be leased from the City to the Garden.

RECITALS:

A. On September 15, 1882, by Deed filed for record in Volume 341 at Page 165 in the office of the Recorder of Cuyahoga County, Ohio, Jephtha H. Wade conveyed to the City certain premises "To be used for no other purpose than a Public Park and to be called and known forever by the name of Wade Park", and that "if the grounds aforesaid or any part thereof shall be perverted or diverted from the public purposes and uses herein expressed, the said property and every part thereof to revert to" the grantor or his heirs forever.

B. On October 7, 1963 the City of Cleveland Council by Ordinance No. 1578-63 authorized the City to enter into an agreement with the Garden providing for the erection and maintenance of a garden center building in Wade Park and other matters set forth therein, which Agreement was executed by the City and the Garden on September 11, 1964. On November 30, 1964, the City of Cleveland Council by Ordinance No. 2420-64 approved the terms and conditions of a lease as contemplated under said Ordinance No. 1578-63 and authorized the City to lease a portion of Wade Park ("Original Leased Premises") to the Garden and to enter into an Indenture of Lease ("Original Lease") with the Garden for the purpose of permitting the Garden to erect, install, maintain and use a building or buildings, together with drives, walks, gardens, landscaping and other

improvements incidental thereto, for housing The Garden Center of Greater Cleveland. The Original Lease was entered into December 9, 1964 and recorded with the Cuyahoga County recorder on April 2, 1968 in Volume 458 Page 303.

C. On July 15, 1968, the City of Cleveland Council by Ordinance No. 1305-68 authorized the City and the Garden to lease an additional parcel in Wade Park to the north of the Original Leased Premises ("First Additional Parcel") set forth in Exhibit A attached hereto and incorporated by reference herein. Although the lease of the First Additional Parcel was authorized by the City of Cleveland Council, no lease was executed or recorded.

D. On December 16, 1968, the City of Cleveland Council by Ordinance No. 1976-68 authorized the City and the Garden to lease an additional parcel in Wade Park to the south of the Original Leased Premises ("Second Additional Parcel") set forth in Exhibit B attached hereto and incorporated by reference herein. Although the lease of the Second Additional Parcel was authorized by the City of Cleveland Council, no lease was executed or recorded.

E. On October 21, 1970, the City of Cleveland Council by Ordinance No 1423-70 authorized the City and Garden to amend the Original Lease to add an additional parcel in Wade Park to the south of the Second Additional Parcel (the "Third Additional Parcel") and to extend the term of the Original Lease and the leases previously authorized as to the First Additional Parcel and the Second Additional Parcel until December 31, 2068. On April 15, 1971, the City and Garden entered into a Supplemental Indenture of Lease Agreement ("Supplemental Lease") to expand the premises demised under the Original Lease and to extend the lease term to December 31, 2068, all as set forth in said Supplemental Lease. The Supplemental Lease was entered into April 15, 1971 and recorded with the Cuyahoga County Recorder December 10, 1997 Volume 97-12785, Page 9.

F. The City and Garden desire to enter into this Second Supplemental Lease in order to confirm the addition of the First Additional Parcel and the Second Additional Parcel to the premises leased by the City to the Garden under the Original Lease as amended by the Supplemental Lease, as contemplated by Ordinance Nos. 1305-68 and 1976-68.

NOW, THEREFORE, in consideration of the rents to be paid and covenants to be performed by the Garden in this Second Supplemental Lease, the Original Lease, and the Supplemental Lease (the Original Lease and the Supplemental Lease are collectively referred to as the "Lease"), and for other good and valuable consideration, the receipt and sufficiency being acknowledged by both parties, the City and Garden agree as follows:

I. The City does hereby let and lease the First Additional Parcel and the Second Additional Parcel as described in Exhibits A and B, respectively, and further the City does ratify and confirm the let and lease, as of July 15, 1968, as to the First Additional Parcel and as of December 16, 1968 as to the Second Additional Parcel, as authorized by Ordinance Nos. 1305-68 and 1976-68, respectively,

TO HAVE AND TO HOLD the same unto the Garden, for and during the term from and after the date hereof, through December 31, 2068, subject to all the terms and covenants of the Lease.

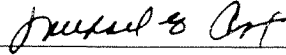
II. The provisions of this Second Supplemental Lease are incorporated into the Lease as if fully rewritten therein. All terms set forth in initial capitals in this Second Supplemental Lease that are not specifically defined shall have the respective meaning ascribed to such terms in the Lease. In the event of any conflict between the Lease and this Second Supplemental Lease the provisions, terms and conditions of this Second Supplemental Lease shall control. Except as specifically amended, modified, and supplemented by this Second Supplemental Lease, all terms, covenants, conditions, and provisions contained in the Lease shall be and remain unchanged and in full force and effect, the same being in all respects ratified and confirmed by the parties to this Second Supplemental Lease, there being no existing or prospective defaults under the Lease by either such party. The Lease, together with this Second Supplemental Lease, constitutes the entire agreement and understanding between the City and Garden with respect to the premises demised under the Lease and this Second Supplemental Lease, all prior conversations and other writings between the parties and their representatives being merged into the Lease and this Second Supplemental Lease and extinguished. All terms, covenants, conditions, and provisions contained in the Lease and this Second Supplemental Lease shall be binding upon, and shall inure to the benefit of, the parties to this Second Supplemental Lease and their respective successors, assigns, and grantees, and shall run with the land.

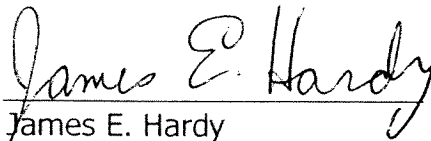
III. The parties to the Lease have caused this Second Supplemental Lease to be executed as of the Effective Date.

*Second Supplemental Indenture of Lease Agreement
signature page to follow*

CITY OF CLEVELAND

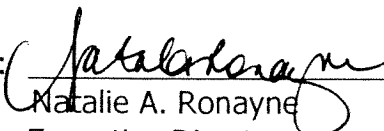
601 Lakeside Avenue
Cleveland, OH 44114
(216) 664-4000

By: 
Michael E. Cox
Director of Parks,
Recreation and Properties

By: 
James E. Hardy
Commissioner Of
Purchases And Supplies


CLEVELAND BOTANICAL GARDEN

11030 East Boulevard
Cleveland, OH 44106

By: 
Natalie A. Ronayne
Executive Director

The legal form and correctness
of this instrument is approved:

Robert J. Triozzi, Esq.
Director of Law

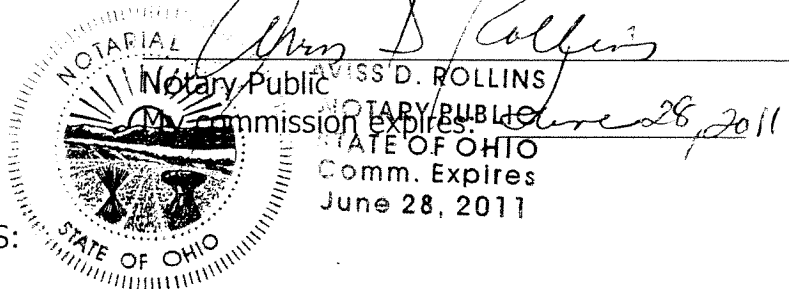
By: 
Andrea M. Paspek, Esq.
Assistant Director of Law

Second Supplemental Indenture of Lease Agreement

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public, in and for said county and state, personally appeared the above-named CITY OF CLEVELAND, OHIO, a municipal corporation duly formed and validly existing under the laws of the State of Ohio, by Michael E. Cox, its Director of Parks, Recreation and Properties, who acknowledged that he did sign the foregoing instrument as such officer on behalf of the municipal corporation and that the same is the free act and deed of said municipal corporation, and his free act and deed personally and as such officer.

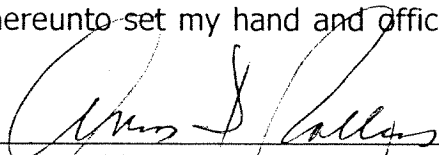
IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 18 day of December, 2008.



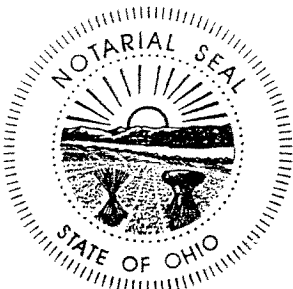
STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public, in and for said county and state, personally appeared the above-named CITY OF CLEVELAND, OHIO, a municipal corporation duly formed and validly existing under the laws of the State of Ohio, by James E. Hardy, its Commissioner of Purchases and Supplies, who acknowledged that he did sign the foregoing instrument as such officer on behalf of the municipal corporation and that the same is the free act and deed of said municipal corporation, and his free act and deed personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 18 day of December, 2008.



Notary Public
My commission expires: June 28, 2011



AVISS D. ROLLINS
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
June 28, 2011

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public, in and for said county and state, personally appeared the above-named CLEVELAND BOTANICAL GARDEN, an Ohio not-for-profit corporation, by Natalie A. Ronayne, its Executive Director, who acknowledged that she did sign the foregoing instrument as such officer on behalf of said corporation, and is duly authorized to do so, and that the same is the free act and deed of said corporation, and her free act and deed individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 6 day of November, 2008.



Notary Public

My commission expires: 01/16/2013

ELISABETH P. SCHEELE
Notary Public, State of Ohio, Cuy. Cty.
My commission expires Jan. 16, 2013

This Instrument Prepared By:
City of Cleveland
601 Lakeside Avenue
Cleveland, Ohio 44114

EXHIBIT A

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio and known as being part of Original 100 Acre Lot No. 394, being further described as follows:

Beginning at a point in the Southwesterly edge of the pavement of East Blvd., N.E. at the most Northerly corner of land leased to the Garden Center of Greater Cleveland by the City of Cleveland by Ord. No. 1573-63 dated October 7, 1963; thence from said place of beginning South 65 degrees 12 minutes 20 seconds West, 325.00 feet along the Northwesterly line of land so leased to the Garden Center of Greater Cleveland to the most Westerly corner thereof;

Thence North 5 degrees 33 minutes 39 seconds West, 95.03 feet along the Northerly prolongation of the Westerly line of land so leased to the Garden Center of Greater Cleveland, to a point therein;

Thence North 65 degrees 12 minutes 20 seconds East, 236.64 feet parallel with said Northwesterly line of land so leased to the Garden Center of Greater Cleveland to a point is said Southwesterly edge of the pavement of East Blvd., N.E.;

Thence South 29 degrees 17 minutes 40 seconds East, 90.00 feet along said Southwesterly edge of the pavement of East Blvd., N.E. to the place of beginning, be the same more or less but subject to all legal highways.

EXHIBIT B

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being part of original 100 acre lot No. 394, being further described as follows:

Beginning at the southwesterly corner of land leased to the Garden Center of Greater Cleveland by the City of Cleveland by ordinance No. 1573-63 dated October 7, 1963; thence from said place of beginning south 5 degrees 33 minutes 39 seconds east along the southerly prolongation of the westerly line of land so leased to the Garden Center of Greater Cleveland, 65.00 feet to a point therein;

Thence north 84 degrees 26 minutes 21 seconds east, 100.00 feet to a point;

Thence south 5 degrees 33 minutes 39 seconds east, 123.50 feet to a point;

Thence south 73 degrees 29 minutes 31 seconds east, parallel with the southwesterly line of land so leased to The Garden Center of Greater Cleveland 105.42 feet to a point in the northwesterly edge of the pavement of East Blvd., N.E.

Thence along said northwesterly edge of the pavement of East Blvd., N.E. the following bearings and distances.

North 48 degrees 45 minutes 59 seconds east, 43.75 feet;

North 39 degrees 15 minutes 29 seconds east, 54.00 feet;

North 29 degrees 45 minutes 29 seconds east, 51.70 feet to a point therein at the most southerly corner of land leased to the Garden Center of Greater Cleveland, as aforesaid:

Thence north 73 degrees 29 minutes 31 seconds west, along the southwesterly line of land so leased to The Garden Center of Greater Cleveland, 325.00 feet to the place of beginning, be the same more or less, but subject to all legal highways.